

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONSTELLATION NEWENERGY, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
POWERWEB TECHNOLOGIES, INC.	:	NO. 02-2733

ORDER

AND NOW, this day of July, 2004, it is hereby
ORDERED that:

(1) the unopposed motion of counterclaim defendant
Constellation NewEnergy, Inc. ("NewEnergy") for summary judgment
on Count II of the amended counterclaim of Powerweb Technologies,
Inc. ("Powerweb") is GRANTED. Powerweb agrees it has no claim
for breach of the letter of intent;

(2) the motion of NewEnergy for summary judgment on
Count IV of the amended counterclaim is GRANTED. Under
Pennsylvania law, there is no independent cause of action for
breach of implied contractual duties of good faith and fair
dealing under the circumstances presented here. See Northview
Motors, Inc. v. Chrysler Motors Corp., 227 F.3d 78, 91-92 (3d
Cir. 2000);

(3) judgment is entered in favor of NewEnergy and
against Powerweb on Counts II and IV of the amended counterclaim
of Powerweb;

(4) the motion of NewEnergy for summary judgment is otherwise DENIED on the ground that genuine issues of material fact exist;

(5) the motion of Powerweb for summary judgment on Count IV of the second amended complaint of NewEnergy is GRANTED. NewEnergy is not entitled to an equitable accounting since it has adequate legal remedies. See Meier v. Maleski, 648 A.2d 595, 606 n.21 (Pa. Commw. 1994); Berger & Montague P.C. v. Scott & Scott L.L.C., 153 F. Supp. 2d 750, 754 (E.D. Pa. 2001);

(6) judgment is entered in favor of Powerweb and against NewEnergy on Count IV of the second amended complaint; and

(7) the motion of Powerweb for summary judgment is otherwise DENIED on the ground that genuine issues of material fact exist.

BY THE COURT:

J.